

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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U.S.W.U. LOCAL 74 WELFARE FUND and
U.S.W.U. LOCAL 74 SUPPLEMENTAL
BENEFITS FUND by its Trustee
SAL ALLADEEN,

Plaintiffs,

-against-

THE LUTHERAN ALL FAITHS CEMETERY,

Defendant.
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17 Civ.

COMPLAINT

Plaintiffs, U.S.W.U. LOCAL 74 WELFARE FUND and U.S.W.U. LOCAL 74
SUPPLEMENTAL BENEFITS FUND, by its Trustee SAL ALLADEEN, by their attorneys,
O'DWYER & BERNSTIEN, LLP, complaining of defendant THE LUTHERAN ALL
FAITHS CEMETERY, allege the following:

NATURE OF ACTION

1. This is an action arising under the Employee Retirement Income
Security Act of 1974 ("ERISA"); 29 U.S.C. §1001, *et seq.*, and the Labor Management
Relations Act of 1947 ("LMRA"), 29 U.S.C. §152 *et seq.*, to compel defendant make benefit
fund contributions on behalf of its employees in accordance with applicable law, governing
trust fund documents, and collective bargaining agreements and extensions thereof.

JURISDICTION

2. Jurisdiction over this action is conferred upon this Court by Sections
502(a)(3), 502(e), and 502(f) of ERISA, 29 U.S.C. Sections 1132 (a)(3), (e), and (f).

VENUE

3. Venue is proper in this district pursuant to ERISA Section 502(e)(1), 29 U.S.C. §1132(e)(1), in that the Plaintiff benefit plans are administered in this District.

PARTIES

4. At all times relevant herein, the U.S.W.U. LOCAL 74 WELFARE FUND (hereinafter “the WELFARE FUND”), was a jointly trustee employee benefit plan within the meaning of Sections (3)(1), (2), and (3) of ERISA and §502(d)(1) of ERISA, 29 U.S.C. §§1002(1), (2), (3) and 1132(d)(1). Sal Alladeen is a Trustee of the WELFARE FUND and appears in his representative capacity.

5. At all times relevant herein, the WELFARE FUND had its principal place of business at 36-36 33rd Street, Long Island City, New York 11106.

6. At all times relevant herein, the U.S.W.U. LOCAL 74 SUPPLEMENTAL BENEFITS FUND (hereinafter “the SUPPLEMENTAL BENEFITS FUND”), was a jointly trustee employee benefit plan within the meaning of Sections (3)(1), (2), and (3) of ERISA and §502(d)(1) of ERISA, 29 U.S.C. §§1002(1), (2), (3) and 1132(d)(1). Sal Alladeen is a Trustee of the SUPPLEMENTAL BENEFITS FUND and appears in his representative capacity.

7. At all times relevant herein, the SUPPLEMENTAL BENEFITS FUND had its principal place of business at 36-36 33rd Street, Long Island City, New York 11106.

8. Upon information and belief, Defendant THE LUTHERAN ALL FAITHS CEMETERY (“ALL FAITHS”), was a New York not for profit corporation operating a cemetery with principal executive offices located at 67-29 Metropolitan Avenue, Middle Village, New York 11379.

9. At all times relevant herein, ALL FAITHS was an employer in an industry affecting commerce within the meaning of ERISA §§(3)(5), (11), and (12), 29 U.S.C. §§1002 (5), (11), and (12).

10. At all times relevant herein, ALL FAITHS was the employer of approximately 30 workers who are represented by Local 74, United Service Workers Union, International Union of Journeymen and Allied Trades (“Local 74”), for collective bargaining purposes (said workers referred to herein as “Local 74 bargaining unit workers”).

11. At all times relevant herein, there were in force and effect collective bargaining agreements and extensions thereof by and between Local 74 and ALL FAITHS, establishing terms and conditions of employment of Local 74 bargaining unit workers, including that ALL FAITHS is required to make contributions to the Plaintiffs on behalf of covered employees.

12. At all times relevant herein, there were in force and effect Trust Agreements establishing the Plaintiffs with which Defendant is required to comply.

13. At all times relevant herein, there were in force and effect delinquent contribution collections policies adopted by the Plaintiffs with which Defendant is required to comply.

14. At all times relevant herein there were in force and effect Trustee resolutions of the Plaintiffs with which Defendant was required to comply by virtue of the Trust Agreements of the Plaintiffs, among other documents, and applicable law.

COUNT I

15. Plaintiffs repeat the allegations of the preceding paragraphs of the complaint as if set forth in full hereat.

16. On or about September 29, 2017, auditors acting on behalf of Plaintiffs issued its audit of Defendant's books and records for the period January 1, 2015 through and including December 31, 2016.

17. Said audit found that ALL FAITHS underpaid its contributions to the WELFARE FUND in the principal amount of \$200,265.

18. In accordance with governing documents and applicable law, said audit assessed interest on the delinquent contributions from the date due until August, 2017 in the sum of \$31,206.52.

19. Also in accordance with governing documents and law, interest continues to run on unpaid contributions from August 2017 through the date paid, at the rate of 10% per year.

20. Said audit also found that ALL FAITHS underpaid its contributions to the SUPPLEMENTAL BENEFITS FUND in the principal amount of \$7,600.80.

21. In accordance with governing documents and applicable law, said audit assessed interest on the delinquent contributions from the date due until August, 2017 in the sum of \$1,092.20.

22. Also in accordance with governing documents and law, interest continues to run on unpaid contributions from August 2017 through the date paid at the rate of 10% per year.

23. By letter dated October 17, 2017, the Plaintiffs made a demand to ALL FAITHS for payment of contributions (principal and interest) found due and owing by said audit.

24. By letter dated December 7, 2017, counsel for Plaintiffs repeated the demand for payment to ALL FAITHS.

25. To date, ALL FAITHS has failed and/or refused to pay the contributions (principal and interest) found due and owing by said audit despite demand therefor, in violation of the collective bargaining agreement between Local 74 and ALL FAITHS and documents and rules governing the Plaintiffs.

26. By virtue of the foregoing, ALL FAITHS has violated ERISA, including but not limited to ERISA Section 515, 29 U.S.C. §1145.

WHEREFORE, Plaintiffs demand judgment against ALL FAITHS as follows:

(a) awarding judgment to Plaintiff WELFARE FUND in the sum of \$231,471.52, together with interest thereon from August 2017 until the date paid at the rate of 10% per year, compounded;

(b) awarding judgment to Plaintiff SUPPLEMENTAL BENEFITS FUND in the sum of \$8,693.00, together with interest thereon from August 2017 until the date paid at the rate of 10% per year, compounded;

(c) awarding Plaintiffs' attorneys' fees, costs and expenses of this action and liquidated damages of 20% of the principal sum due in accordance with and required by ERISA Section 502(g), 29 U.S.C. §1132(g); and

(d) such other and different relief as the Court deems proper and just.

Dated: New York, New York
December 28, 2017

Yours, etc.,

O'DWYER & BERNSTIEN, LLP

By:



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ZACHARY HARKIN (ZH0620)

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